

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-01-264 MCE GGH P

vs.

NOEL BRAVO-SOSA,

Movant.

ORDER

Movant, a federal prisoner proceeding pro se, has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.¹ In addition, movant has requested the appointment of counsel.

There currently exists no absolute right to appointment of counsel in § 2255 proceedings. See, e.g., Irwin v. United States, 414 F.2d 606 (9th Cir. 1969). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Rules Governing Section 2255 Proceedings. In the present

¹ According to the court’s docket, this case is currently before the Ninth Circuit on appeal following the district court’s affirmance of the original sentence upon remand from the Ninth Circuit. Movant filed this motion at the time that the remand for a sentencing issue was pending and asked at that time that the § 2255 motion be “consolidated” with the issue on remand before the district court. (See docket entry no. 110). The sentencing question having been separately addressed, this matter now proceeds.

1 case, the court does not find that the interests of justice would be served by the appointment of
2 counsel at this time.

3 Since movant may be entitled to the requested relief if he can establish a violation
4 of his constitutional rights, respondent will be directed to respond.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Movant's October 26, 2005, request for appointment of counsel is denied
7 without prejudice to a renewal of the request at a later stage of the proceedings.

8 2. Respondent is directed to file an answer within thirty days of the effective date
9 of this order. See Rule 4, Rules Governing Section 2255 Proceedings. Respondent shall include
10 with the answer any and all transcripts or other documents relevant to the determination of the
11 issues presented in the motion. Rule 5, Rules Governing Section 2255 Proceedings.

12 3. Movant's traverse, if any, is due on or before thirty days from the date
13 respondent's answer is filed.

14 4. The Clerk of the Court shall serve a copy of this order, together with a copy of
15 movant's motion, on the United States Attorney or his authorized representative.

16 DATED: 7/28/06

17 /s/ Gregory G. Hollows

18 GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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